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May 3, 2007

The Honorable Alberto R Gonzales
Attorney General
950 Pennsylvania Ave., N.W.
U.S. Department of Justice
Washington, DC 20530-0001

Dear Attorney General Gonzales:

I am writing you regarding the case of Luis Posada Carriles. An April 9, 2007 ruling by the District Court in El Paso, Texas has permitted this Venezuelan national to be released from detention. He is presently residing in Miami, Florida while awaiting a deportation hearing on May 11th.¹ I respectfully request an explanation as to why you have not certified Mr. Posada as a terrorist alien and detained him.

As you are aware, under 8 U.S.C. § 1226a (a) (3), the Attorney General may certify an alien "if the Attorney General has reasonable grounds to believe" that the alien falls within certain categories of inadmissible aliens. Among the excludable are those aliens who have "engaged in a terrorist activity."² An alien is deemed to have engaged in a terrorist activity if he has, *inter alia* "commit[ted] or incite[d] to commit", "prepare[d] or plan[ned]" or "solicite[d] funds for" a terrorist activity.³ The term, "terrorist activity," is broadly defined in this Section to include "the highjacking or sabotage of any conveyance", "the violent attack upon an internationally protected person"⁴ and the use of any "explosive, firearm, or other weapon or dangerous device ... with intent to endanger, directly or indirectly, the safety of one or more individuals or to cause substantial damage to property."⁵

There is substantial evidence to justify a conclusion that Mr. Posada "has engaged in a terrorist activity" as defined above. Indeed, Mr. Posada has been

¹ US vs. Luis Posada Carriles, 2007 Lexis 26836 (April 6, 2007).

² § 1182(a)(3)(B)(i)(I).

³ § 1182(a)(3)(B).

⁴ 18 U.S.C. § 1116(b)(4)(B) defines an 'internationally protected person' as a "representative, officer, employee, or agent of the United States Government, a foreign government, or international organization who at the time and place concerned is entitled pursuant to international law to special protection against attack upon his person...").

⁵ *Id.*

linked to multiple terrorist acts, including bombings of hotels and an airplane as well as an attack on a protected person. First, various reports indicate that Mr. Posada is the mastermind of the October 6, 1976 bombing of a Cuban airplane.⁶ The downing of this airline, traveling from Venezuela to Cuba via Trinidad and Tobago and Barbados, resulted in the deaths of 73 individuals, including many teenage members of a sports team. Declassified FBI and CIA documents report his participation in planning the attack.⁷ He was charged in Venezuelan courts with complicity in this bombing and his employees confessed to leaving the explosives on the plane.⁸ Mr. Posada escaped from prison in Venezuela in 1985 scuttled plans to retry him there. The 2005 denial by an administrative law judge of Venezuela's extradition request for Mr. Posada will preclude him from answering these charges.

Mr. Posada own admissions of involvement in terrorist attacks likewise support certification. He himself boasted of his involvement in the 1997 series of bombings of tourist hotels in Havana.⁹ These attacks resulted in the death of an Italian tourist and significant property damage. He was likewise charged in Panama in 2000 with attempting to assassinate Fidel Castro, an internationally protected person under 18 U.S.C. Section 11169(b) (4) (B). He ultimately was convicted of crimes against national security in that country.¹⁰

Based on the above, there is more than ample evidence to justify certifying Mr. Posada under 8 U.S.C. § 1226a (a). Indeed, the Justice Department's own court filings have already identified Mr. Posada as a terrorist¹¹ and the FBI has described him as a national security threat.¹² Given these facts, the Justice Department's failure to avail itself of this provision to prevent Mr. Posada's release from detention merits an explanation.¹³

⁶ See, e.g., Editorial Board, "A Terrorist Walks," Los Angeles Times, April 20, 2007.

⁷ Letter from FBI Director Clarence Kelley to Secretary of State Henry Kissinger, Nov. 12, 1976 (reporting that "the bombing of the Cubana Airlines DC-8 was planned, in part, in Caracas, Venezuela, at two meetings attended by . . . Luis Posada Carriles . . ."); CIA Document 'Luis Clemente Posada Carriles.', volume 1, 201-900385 (noting report received from informant linking Posada to bombing and that "[e]vidence to support Posada's involvement includes billing invoices seized in raid" on Posada's office).

⁸ Simon Romero "Bomb Resonates with Diplomats, not with Bomber," New York Times, Feb. 3, 2007.

⁹ Ann Louise Bardach, "Twilight of the Assassins," The Atlantic Online, November 2006 (referencing her 1998 interviews with Mr. Posada for a New York Times series of articles).

¹⁰ Motion of the United States for an Emergency Stay of the District Court's Order of Pretrial Release, US vs. Luis Posada Carriles, April 12, 2007.

¹¹ Respondents' Objections to the Magistrate Judge's September 11, 2006 Report and Recommendation, Oct. 5 (describing Mr. Posada as "an unrepentant criminal and admitted mastermind of terrorist plots and attacks on tourist sites").


¹² Affidavit of FBI Special Agent Thomas H. Rice, submitted to the Executive Office for Immigration Review, June 10, 2005 (affirming that "the FBI cannot rule out the possibility that [Mr. Posada] poses a threat to the national security of the United States").

¹³ Magistrate Judge Garney, in granting Mr. Posada's request for release, even noted that the Justice Department could have utilized the Patriot Act to detain him. See Posada-Carriles vs. Alfredo Campos, EP-06-CV-0130-PRM, Sept. 11, 2006.

Mr. Posada's release from prison calls into question our commitment to combating terrorism and raises concerns about a double standard in our treatment of terrorists. Certification and detention of Mr. Posada under Section 1226a (a) would have demonstrated forcefully that our Justice Department seeks to hold all terrorists accountable for their crimes.

I look forward to receiving your explanation.

Respectfully yours,

A handwritten signature in black ink, appearing to read "William D. Delahunt". The signature is fluid and cursive, with a long horizontal stroke at the end.

William D. Delahunt

cc: Hon. Kenneth Wainstein, Assistant Attorney General for National Security